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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,031	11/17/2003	LeNoir E. Zaiser	2173.1004-003	2790
21005	7590	09/16/2005		
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			EXAMINER MITCHELL, TEENA KAY	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,031

Applicant(s)

E. ZAISER ET AL.

Examiner

Teena Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-12, 14, 15, 17-23, 26-29 and 31-35 is/are rejected.
- 7) ☒ Claim(s) 6, 13, 16, 24, 25 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/17/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-5, 7-12, 14, 15, 17-23, 26-29, and 31-35 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 6,7, 11, 15, 21, 23, and 32 of U.S. Patent No.

6,647,982. Although the conflicting claims are not identical, they are not patentably distinct from each other because **Claim 1 of the instant application** discloses an outer body having an inner cavity formed therein (limitations found in claim 1 of the patent), the inner cavity bounded by an inner wall of the outer body (limitations found in claim 1, lines 5-10 of the patent), the inner wall having an orifice extending through the outer body (inasmuch as the inner core is secured to the outer body, it would be obvious that the inner wall has an orifice extending through the outer body and also the orifice would be inherently present for the flow of oxygen); an inner element within the cavity, the inner element having an external wall with a coupling feature, the coupling feature

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aligned with the inner wall (the limitation can be found in claim 7 of the patent); and a gas fitting extending through the orifice and coupling with the coupling feature (the limitations can be found in claims 1,1-3 and 7 of the patent), the instant application claim 1 is merely broader than the patented claim 1 and has some features found in claims 2, 3, and 7 of the patent, therefore the patented claim 1 "anticipates" the application claim (In re Goodman, 11F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993).

Claim 2 of the instant application limitations can be found in claim 1 and 11 of the patent. **Claim 3 of the instant application limitations** can be found in claim 6 of the patent. **Claim 4 of the instant application limitations** can be found in claim 6 of the patent (with respect to the language of "substantially" it would be obvious to one of ordinary skill in the art at the time the invention was made that if the inner element was made of brass the limitation of substantially made of brass would also be met by the language of claim 6 of the patent). **Claim 5 of the instant application limitations** can be found in claim 15 of the patent. **Claim 7 of the instant application limitations** can be found in claim 1 and 32 of the patent. **Claim 8 of the instant application limitations** can be found in claim 21 of the patent (the limitation of the second coupling would be a mere duplication of parts which would have been obvious to one of ordinary skill in the art). **Claim 9 of the instant application limitations** can be found in claim 21 of the patent. **Claim 10 of the instant application limitations** can be found in claim 6 of the patent (while claim 10 is a method claim the patent in claim 6 discloses the use of aluminum and therefore it would have been obvious to use an aluminum for the outer body). **Claim 11 of the instant application limitations** can be found in claim 6 of the

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patent. **Claim 12 of the instant application** limitations can be found in claim 25 of the patent. **Claim 14 of the instant application** limitations can be found in claim 21 of the patent. **Claim 15 of the instant application** limitations can be found in claims 32 and 34 of the patent. **Claim 17 of the instant application** limitations can be found in claim 35 of the patent. **Claim 18 of the instant application** limitations can be found in claim 36 of the patent. **Claim 19 of the instant application** limitations can be found in claim 32 of the patent. **Claim 20 of the instant application** limitations can be found in claim 37 of the patent. **Claim 21 of the instant application**, limitations can be found in claims 1, 3, 7, and 11 of patent '982. **Claim 22 of the instant application**, limitations can be found in claim 6 of patent '982. **Claim 23 of the instant application**, limitations can be found in claim 6 of patent '982. **Claim 26 of the instant application**, limitations can be found in claims 1 and 21 of patent '982. **Claim 27 of the instant application**, limitations can be found in claim 22 of patent '982. **Claim 28 of the instant application**, limitations can be found in claim 23 of patent '982. **Claim 29 of the instant application**, limitations can be found in claim 25 of patent '982. **Claim 31 of the instant application**, limitations can be found in claims 1, 2, 32, and 33 of patent '982. **Claim 32 of the instant application**, limitations can be found in claims 3 and 35 of patent '982. **Claim 33 of the instant application**, limitations can be found in claims 5 and 36 of patent '982. **Claim 34 of the instant application**, limitations can be found in claim 6 of patent '982. **Claim 35 of the instant application**, limitations can be found in claim 7 of patent '982.

Response to Arguments

Applicant's arguments, see pages 8 and 9, filed 1/5/05, with respect to claims 1-3, 5, 6, 8-10, 12, and 13 have been fully considered and are persuasive. The rejection of claims 1-3, 5, 6, 8-10, 12, and 13 has been withdrawn.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

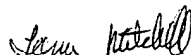
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell
Primary Examiner
Art Unit 3743
September 13, 2005



TKM